

MINUTES
ZONING BOARD OF APPEALS
JANUARY 5, 2007

Location: Conference Room, 2 Fairgrounds Road, Nantucket, MA
Call to Order: 1:08 PM
Members Present: Nancy Sevens (arrived at 1:08), Dale Waine, Michael O'Mara, Edward Toole, Kerim Koseatac
Alternates Present: David Wiley, Burr Tupper
Absent:
Staff: Linda Williams, Administrator
Department Staff: Marcus Silverstein, Zoning Enforcement

OLD BUSINESS APPLICATIONS:

1. MONCURE CHATFIELD-TAYLOR, (079-06), 91 WASHINGTON STREET EXTENSION:

Sitting: Sevens, Waine, O'Mara, Tupper

Planning Board Rec.: The Planning Board made a negative recommendation as there were issues of planning concern.

Public Comment: None at this meeting. There had been substantial comment at the first hearing.

Representing: Attorney Richard Glidden for the Applicants

Discussion: This matter had been continued without further discussion from September, October, November and December 2006 and now to this meeting. Glidden asked that it be continued again without discussion to the February 9, 2007 meeting.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER TO FEBRUARY 9, 2007 MEETING WITHOUT FURTHER DISCUSSION, AFTER OPENING AT SEPTEMBER MEETING. THERE WAS ALREADY AN EXTENTION FOR ACTION ON RECORD UNTIL FEBRUARY 23, 2007,** (Waine/Toole).

Conditions: NA

2. PRICILLA L. REIS, (085-06), 80 MIACOMET AVENUE:

Sitting: Sevens, O'Mara, Toole, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: None

Representing: Attorneys Arthur Reade and Steven Cohen for the Applicant

Discussion: The matter had been continued without opening from the October, November and December 2006 meetings and then to this meeting. There were ongoing discussions taking place with the ZEO that may resolve the issue. Cohen again asked that the matter be continued without opening to the February 9, 2007 meeting.

Action/Vote: **IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO FEBRUARY 9, 2007 MEETING. THERE WAS ALREADY AN EXTENTION FOR ACTION ON RECORD UNTIL FEBRUARY 23, 2007,** (O'Mara/Toole).

Conditions: NA

3. GEORGE H. DAVIS AND EMILY SNOW DAVIS, TRUSTEES OF JEFFERSON AVENUE REALTY TRUST AND THOMAS G. SNOW AND VALERIE G. SNOW, TRUSEES OF BUG LIGHT REALTY TRUST, OWNERS; AND FOR CAMILLA WARRENDER, CONTRACT PURCHASER, (093-06), 7 AND 9 JEFFERSON AVENUE:

Sitting: Sevens, Waine, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation as there were no issues of planning concern.

Public Comment: Attorney Sarah Alger stated that her client was opposed to the variance relief and saw no reason to grant it as the Applicant could design a house that would be conforming as to setback requirements.

Representing: Attorney Richard Glidden for the Applicant (Warrender), Attorney Arthur Reade for the Applicant (Davis), Attorney Sarah Alger represented abutter Peter McCausland on Lincoln Circle, in opposition.

Discussion: Glidden gave a synopsis of the previous hearing. He reiterated that due to the presence of substantial wetlands on the property, the building envelope for the proposed house was very small and needed to be partially located within the required front yard setback area. Applicant was asking to be able to site the house as close as about 2.3 feet from the front yard lot line along Jefferson Avenue rather than the ten feet required. Glidden stated that the Con Com had required that the Applicants come before the ZBA before granting any approvals putting the Applicant in a difficult position between the two boards. Glidden did state that it was possible to build a small house outside of the required setback areas but given the value of the real estate it was impractical and there were sufficient grounds to grant variance relief due to the wetlands affecting the property. They had made an attempt to move the house back a foot to over three feet, but about 320 square feet of structure was still sited within the front yard setback area. Reade stated that there were grounds for a grant of variance relief and that the Applicant was squeezed between zoning requirements and wetlands requirements. It was not a large house and would be well under the allowable ground cover. Alger argued that it was a vacant lot. It would have been different had there been a house on the lot already. Sevens stated that a house could be designed that met the setbacks as it was a vacant lot and saw no reason for relief as there was no an inherent right to build that sized house. Wiley agreed with Sevens and stated that the lot was a blank slate. There was an alternative to relief and to grant relief for an owner created hardship would not be appropriate in this case despite the wetlands issues. Waine stated that he understood the problem and felt that a compromise might be possible.

Action/Vote: UPON AN INITIAL MOTION DULY MADE AND SECONDED TO GRANT THE RELIEF REQUESTED BY VARIANCE PURSUANT TO SECTION 139-16A, TO REDUCE THE FRONT YARD SETBACK TO FIVE FEET, THERE WAS ONE VOTE IN FAVOR (WAINE) AND FOUR OPPOSED (SEVRENS, KOSEATAC, WILEY, TUPPER). A SECOND MOTION WAS MADE AND SECONDED TO GRANT THE RELIEF REQUESTED WITH A FRONT YARD SETBACK OF ABOUT 2'3", AND THERE WERE NO VOTES IN FAVOR AND FIVE OPPOSED. THEREFORE RELIEF WAS DENIED, (Waine/Koseatac).

Conditions: NA

NEW BUSINESS:

4. JENNIFER M. ERICHSEN (001-07), 34 RHODE ISLAND AVENUE:

Sitting: Waine (acting chairman), O'Mara, Toole, Koseatac, Tupper

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holidays.

Public Comment: There was a letter in favor on file from the closest abutter, who also stated that the cottages had been there since prior to 1972.

Representing: Tom and Jennifer Erichsen, for themselves as Applicants

Discussion: Tom Erichsen made the presentation. The lot was located in an area immediately adjacent to the beach in the south shore area of Madaket that had suffered from severe erosion. Since last fall the southernmost cottage, one of two on the lot, had become undermined by the erosion from storm action and it was moved under an emergency permit from the building department to a site on blocks next to the northernmost cottage. The two cottages were of identical footprint. The cottage on the road was going to be moved to another lot the Applicants owned closer to town and the endangered cottage was going to be moved onto the vacated location. The deck would be replaced as well in the front yard setback area in substantially the same location as the current deck and the pump house would remain unchanged. Erichsen asked to be able to move the existing separate storage shed to the southerly side of the house or attach it to the house without having to come back to the Board at some point in the future. The structures were built in their current locations in the 1960's and would come no closer to the front yard lot line than presently existing. The lot was in compliance with ground cover requirements.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTION 139-33A, TO THE EXTENT NECESSARY AND BY VARIANCE PURSUANT TO SECTION 139-16A, TO COMPLETE THE PROJECT AS PROPOSED BY MOVING THE COTTAGE INTO THE FRONT YARD SETBACK, (O'Mara/Toole).

Conditions: Exhibit A; HDC; Exterior work prohibited between July 1 and September 1 of any given year; allowed to relocate the existing shed to a site that would be closer to the relocated dwelling on the southwesterly side of said dwelling, including attaching it to the structure itself, so long as the shed was conforming to the side yard setback requirements, without further relief from this Board.

5. GILDA C. POLLARD, (002-07), 45 EASTON STREET:

Sitting: Sevens, Waine, O'Mara, Koseatac, Tupper

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: None

Representing: Jamie Cabral, nephew of the Applicant, represented the Applicant

Discussion: Cabral stated that his aunt and uncle had owned the property since the 1950's. They started out living in the existing small cottage to the rear of the property. They built the primary dwelling in 1985. The siting of the foundation had been done by the builder and not by a surveyor. It was common for people to set their own batter boards or have their builders do it back then. There was no requirement for an as-built at that time from the Building Department. They never got a CO and after her husband died last year the Applicant started to clean up the outstanding permits. It was at that time an as-built surveyed plot plan was done that indicated that the front steps were sited within the required ten-foot front yard setback area. The side deck was there before the double frontage requirement for lots in the R-1 district was passed at town meeting and was thus grandfathered. There was no plan to alter the house at this time. Sevens questioned the existence of a residency covenant from the 1980's and whether it was in full force and effect. The ZEO stated on the record it should have no affect and his office regularly released such covenants as there is no building cap on record at the moment.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTION 139-16C(2) TO VALIDATE THE CURRENT SITING OF THE FRONT STOOP/STEPS, (Waine/Koseatac).

Conditions: Exhibit A; no further building or expansion of the stoop and stairs within the required ten-foot front yard setback area.

6. OLD NORTH WHARF COOPERATIVE, INC., (003-07), 29A, 29B AND 29C OLD NORTH WHARF:

Sitting: Sevens, Waine, O'Mara, Koseatac, Tupper

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: None

Representing: Attorney Arthur Reade and Attorney Whitney Gifford for the Applicant

Discussion: Reade asked that the matter be continued without opening to the February 9, 2007 meeting.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO CONTINUE THE MATTER WITHOUT OPENING TO FEBRUARY 9, 2007, (O'Mara/Koseatac).

Conditions: NA

7. 8 WINDY WAY LLC, (004-07), 8 WINDY WAY:

Sitting: Sevens, Waine, O'Mara, Toole, Koseatac

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: There were three letters in favor from the direct abutters on file.

Representing: Attorney Steven Cohen for the Applicant

Discussion: Cohen made a lengthy presentation about the history of the property and the confusion related to past Decisions and which property the relief actually applied to. This lot had been part of a larger lot that had been subdivided, creating this property and the immediately abutting commercial property, both of which took advantage of the relief previously granted to the larger lot and both structures had been used for contractor's shops. Cohen stated that the Applicant had received a Multi-Family Special Permit from the Planning Board to place four units on the second floor of the mixed-use commercial structure. The HDC had approved the alterations to the building and they were now in the process of cleaning up the permits at the Building Department and regularizing the relief granted by the ZBA. There had been several commercial tenants in the spaces on the first floor and after the Applicant purchased the property all tenants left the premises and the Applicant proposed to use the entire first floor for one business, as a cabinet shop and related uses and office. The laundry that was permitted in one of the previous Decisions would be removed and the use abandoned. The commercial use of the property would be less intense with one business entity. Applicant asked that all relief be issued anew, even if allowed in previous Decisions, in order to clean up the record. Special Permit relief was being asked to waive open space, parking configuration, aisle width and the loading zone requirements. Variance relief was being asked for to validate the rear walkway that provided alternate access to the apartments due to the steep change in grade from the front of the building to the rear of the building.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED MODIFICATION OF THE PREVIOUS PERMITS, AND RELIEF BY SPECIAL PERMIT UNDER SECTION 139-9B(2)(a), (b) AND (c), TO VALIDATE AND ALTER AND EXPAND THE COMMERCIAL SHOP SPACE AS PROPOSED; UNDER SECTIONS 139-18 AND 139-20 TO THE EXTENT NECESSARY TO WAIVE THE PARKING AND LOADING ZONE REQUIREMENTS AS REQUESTED; UNDER SECTION 139-16E TO WAIVE THE OPEN SPACE REQUIREMENT; AND RELIEF BY VARIANCE, PURSUANT TO SECTION 139-16A WAIVING THE REAR YARD SETBACK REQUIREMENT TO VALIDATE THE REAR WALKWAY, (Waine/Koseatac).

Conditions: Special Permit relief is conditioned on Exhibit A; a maximum of one commercial tenant, either the land owner or otherwise, to operate in the commercial use areas of the site, without further relief from this Board. The walkway, herein validated by the grant of Variance relief, shall be sited substantially as shown upon Exhibit A. In separate action, by a UNANIMOUS vote, the Board waived the site plan review as required under Zoning By-law Section 139-23.

8. GEORGE TOWNSEND, ET AL, (005-07), 69 POCOMO ROAD:

Sitting: Sevrens, Waive, Toole, Koseatac, Wiley (O'Mara specifically recused)

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: None

Representing: Attorney Richard Glidden for the Applicant, Attorney Arthur Reade for the contract purchaser.

Discussion: Glidden made a presentation. The lot was a lot of record and the house was constructed before 1972. The lot was undersized and located in the LUG-3 zoning district. A former owner had made application to the ZBA for variance relief in 1987 in order to cure a possible merger of this lot with an adjacent lot that had been held for a time in common ownership after 1972. The Board determined that no relief was necessary and denied the relief. Oddly, even though there was a denial and thus no conditions able to be imposed, the Board nevertheless made a finding that stated that any change in the residential use, such as expansion of the house, even if conforming, would necessitate a grant of special permit relief. The language of the Decision was confusing and the Applicants were seeking a modification and clarification of the Decision to allow the Applicants to alter, extend and or demolish and reconstruct the main dwelling and construct a new secondary dwelling without needing a grant of special permit relief, provided all dimensional requirements were met. Should the Board not have made the finding, said work would have been allowed as a matter of right. Glidden stated that in 1994 the Zoning By-law changed and allowed that lots, improved with structures that pre-dated 1972, did not merge even if held in common ownership. Reade stated that his client was concerned that the language was confusing enough that even though today no relief would be necessary, the Decision stated that it was necessary. Both attorneys agreed that it was best to strike the language entirely related to the finding.

Action/Vote: IT WAS VOTED UNANIMOUSLY, BY A VOTE OF FOUR IN FAVOR (WAINE, TOOLE, KOSEATAC, WILEY) AND ONE ABSTENTION (SEVRENS) TO GRANT THE REQUESTED MODIFICATION AND CLARIFICATION OF THE 1987 DECISION TO ELIMINATE THE STATEMENT THAT SPECIAL PERMIT RELIEF WAS REQUIRED FOR EXPANSION OR ALTERATION OF A PRIMARY DWELLING AND CONSTRUCTION OF A SECONDARY DWELLING, (Waive/Toole).

Conditions: Any new primary dwelling and/or secondary dwelling and accessory structures shall meet all ground cover and setback dimensional requirements of the Zoning By-law.

9. MNB LLC, (006-07), 136 OLD SOUTH ROAD:

Sitting: Sevrens, Waive, O'Mara, Toole, Koseatac

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: There was one letter of concern on file from the direct abutter to the east. He was primarily concerned about outside storage of material and asked that a sanitary facility be made available to the tenants of the commercial storage units.

Representing: Attorney Richard Glidden for the Applicant

Discussion: Glidden stated that his client had bought the property in 2005 with the intent to continue to lease the individual commercial storage units to separate commercial tradesmen. The property had been benefited by a previous Decision which allowed the passive storage of goods and materials with no outside storage of commercially related materials. In truth, the units had been rented for active storage and workspace by the previous owner. Applicant was now asking to allow active storage, for small tradesmen who would store their materials and equipment in the units. He described the existing types of businesses on site. The Applicant also proposed adding two additional units for a total of ten. There would be no use of the units for fabrication and construction of component parts, such as a contractor's shop. Board Members agreed with the concerns of the abutter and asked that a bathroom facility be provided for the business uses and all would have access to the unit in the building. There was a discussion about the parking situation on the lot. The owner of the property would also use the site for his landscaping business and park his trucks there. The Applicant withdrew that portion of the request for relief under Section 139-9B(2)(a) and (c).

Action/Vote: IT WAS VOTED, BY A VOTE OF FOUR IN FAVOR (WAINE, O'MARA, TOOLE, KOSEATAC) AND ONE OPPOSED (SEVRENS) TO GRANT THE REQUESTED MODIFICATION OF THE DECISION IN BOA FILE NO. 039-96 TO ALLOW THE INCREASE IN NUMBER OF STORAGE UNITS AND THE CHANGE FROM PASSIVE STORAGE TO ACTIVE STORAGE, (Waine/Koseatac).

Conditions: Exhibit A; conditions "c-g", inclusive, contained in the previous Decision, are re-imposed; use of the property shall be limited to a maximum of ten commercial storage units without further relief from this Board; the ten storage units, for a total of nine bays and one shed, shall be limited to active storage by tradesman with no on-site manufacturing and no on-site fabrication or assembly of component parts, and with no storage of boats outside; sanitary facilities (toilet and washroom) shall be provided on-site in accordance with all applicable codes and made available to all commercial tenants; parking of vehicles overnight shall be restricted to vehicles owned by the residential tenant and to vehicles owned by commercial tenants which are owned or controlled by the owner of the property. In separate action, by a UNANIMOUS vote, the Board approved Exhibit A as the site plan for the project as required under Nantucket Zoning By-law Section 139-23.

10. ROBERT C. GRIFFIN AND BARBARA A. GRIFFIN, (007-07), 18 RABBIT RUN ROAD:

Sitting: Sevrens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: None

Representing: Attorney Richard Glidden for the Applicants

Discussion: Glidden stated that the Applicants wanted to demolish an existing single-family dwelling that was nonconforming as to ground cover requirements with a ground cover of about 2300 SF and reconstruct a new single-family dwelling in a different conforming location with a maximum ground cover of about 2300 SF. When the house was constructed the lot and house met all zoning requirements, having the benefit of LUG-1 zoning. However, when the area was re-zoned to LUG-3 the house became grandfathered as to ground cover. No HDC approval had been obtained though the house was in the process of being reviewed. Glidden asked that the Board grant the special permit provided the existing ground cover was not exceeded and the house was sited in a conforming location. Glidden stated that there was no room for a secondary dwelling.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTION 139-33A(9) TO ALLOW DEMOLITION OF THE EXISTING SINGLE-FAMILY DWELLING AND RECONSTRUCTION OF A NEW DWELLING WITHOUT INCREASING THE EXISTING NONCONFORMING GROUND COVER RATIO, (Wiley/O'Mara).

Conditions: The maximum allowable ground cover shall be 2318 square feet; the structure shall comply with all applicable zoning setback requirements.

11. J. STEWART BRYAN AND LISA-MARGARET S. BRYAN, (008-07), 144 MAIN STREET:

Sitting: Sevens, O'Mara, Koseatac, Wiley, Tupper

Planning Board Rec.: The Planning Board made no recommendation due to the lack of meetings over the holiday.

Public Comment: Direct abutters the Montalbanos to the east were present and spoke about light, air and setback issues related to the new addition. They were also concerned about the massing of the structure and argued that the addition overwhelmed their smaller house and the main portion of the Applicants' house.

Representing: Matt MacEachern, designer for the Applicants and Tom Boyce, builder for the Applicants

Discussion: MacEachern stated that the Applicants were undertaking a substantial renovation of the single-family dwelling that included demolition of the newer rear el and reconstruction of a new story and a half rear addition to increase and reconfigure interior living space. The existing easterly setback nonconformity would be cured and the new addition would conform to all setback requirements. The project was before the HDC for review. Applicants were also seeking to add about 56 SF of ground cover. The ridge height of the new addition would be about 21'6" with the main roof ridge staying the same at about 23'6". The existing large tree in the back yard would be worked around and maintained. The existing oil tank would be moved to a conforming location and out of the setback area. There were no plans to alter the garage, which was allowed by a grant of variance relief in 1984.

Action/Vote: IT WAS VOTED UNANIMOUSLY TO GRANT THE REQUESTED SPECIAL PERMIT RELIEF UNDER SECTIONS 139-33A(9) AND 139-333E(2)(a) TO ALLOW THE PROJECT TO BE COMPLETED AS PROPOSED, TO REMOVE AND RECONSTRUCT THE REAR EL, AND EXPAND THE GROUND COVER; AND A MODIFICATION OF THE DECISION IN BOA FILE 073-84 TO ALLOW THE GARAGE TO BE REMOVED AND REPLACED ON THE SAME SITE TO PROVIDE ACCESS TO THE REAR OF THE LOT AS NECESSARY FOR CONSTRUCTION, (O'Mara/Wiley).

Conditions: Exhibit A; the reconstructed rear addition shall conform to all setback requirements; maximum ground cover allowed for the lot shall be 37%; no exterior work between June 15th and September 15th of any given year; no human habitation of the garage and the garage shall be repositioned no closer to the westerly side yard lot line than presently located at about 1.5 feet.

The meeting was adjourned at 2:46 PM (Wiley/Toole)

Respectfully submitted by Linda Williams, recording staff.

